

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940. (This is a PLR).

June 27, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter received March 16, 2000. We apologize for the delay in our response. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Our Company in the person of PERSON has been in correspondence with you in regard to the payment of Use Tax in a specific context we have found ourselves facing. In your latest letter dated 11/29/99 you responded with a General Information Letter, stating that we didn't provide enough documentation.

PERSON is no longer in our employ so I am taking over on this matter. My name is NAME and I am the President of the corporation as well as one of two owners.

It is our desire to have the department provide us with a Private Letter Ruling on this matter. As such I will do my best to cover the (8) points of information necessary for a private letter ruling to be considered:

1. When we Bid work directly for BUSINESS we include Use Tax on the cost of our materials going into that job and remit Use tax accordingly.

On new stores, or major remodeling projects, A.S.A.P.. contracts with one of the major O.E.M. equipment manufacturers who is providing their refrigeration systems and refrigerated cases to act as a prime contractor. On these projects we did to the O.E.M. and are instructed on the bid form to not include use tax in our pricing breakdowns where we show material and labor figures for each phase of the work to be performed. The O.E.M. states that they will submit use tax on the sale price of the material totals and issues a resale certificate and a list of

their resale certificate numbers for each state they do business in. A copy of a typical contract is enclosed as required under point 2.

If I include use tax in my material breakdown figures two things can happen. First of all if my competitors follow the bid instructions I stand the chance that the additional dollars I include for Use Tax on material cost will make my bid too high to be awarded the job, or two if I am awarded the job the state of Illinois will collect more than twice as much tax as they are entitled to since the company I am bidding to will remit on the sales price of the materials, rather than the cost.

2. Please find four sets of documents that illustrate our contention that our customer, in this case CORPORATION, specifically intends to pay tax on the material sales price, and declines to pay the tax to COMPANY.
 - a. Document #1 (2-pages) Showing authorization by the Dept. of Revenue for CORPORATION Corp. to collect taxes. Page two is their current Tax Exemption Certificate.
 - b. Document #2 (3-pages) This again shows our bid to CORPORATION for work to be done in a BUSINESS Store. Please note that we listed the material taxes as a line item. On page two and three CORPORATION issued us Purchase Orders for this work. If you add up the two P.O.'s you will find they total \$235,311.00 (Our total without the listed tax.) Again CORPORATION is taking the responsibility for submitting the tax due.
 - c. Document #3 (2-pages) Showing another example of a bid to CORPORATION for work at a BUSINESS. All applicable segments of the bid are broken down between Labor and Materials and totaled on page two at the top. Tax again is asked for as a line item but not included in the bid total. Again CORPORATION is taking responsibility for the tax owed.
3. The tax period in question is from May of 1998 through the present. There is no ongoing audit or tax litigation pending for this period of time with the department.
4. To the best of my knowledge the department has not ruled or been asked to rule on this issue or any similar issue and no predecessor has previously submitted the same or similar issue to the department but withdrew it before a letter ruling as issued.
5. This type of working relationship with a Manufacturer standing between our company and the end user, mostly BUSINESS has

basically occurred with two manufacturers. (CORPORATION and ABC). Please find Document #4 Uniform Sales & Use Tax Certificate Multijurisdiction from ABC. and their statement at the bottom of the document. Also please find Document #5 attached which is a FAX. from my Illinois Manager MR. A. He spoke to MR. B., the head of taxes for ABC regarding the payment of taxes to Illinois. I encourage you to talk directly to MR. B. with any questions you may have.

6. I know of no authority contrary to my view of this matter, however as I stated previously, when we deal one on one with BUSINESS, without a manufacturer in between we charge use tax on materials and there is no problem with BUSINESS. This type of transaction is clearly stated in the code.
7. There are no trade secrets that we wish to protect in regard to this private letter ruling.
8. I, NAME am the President of this corporation as well as one of two people owning stock in said corporation. It is my understanding that it is not the intent of the Department of Revenue to collect tax twice on the same materials. It is our desire to collect and pay Use Tax to the state of Illinois correctly without jeopardizing our competitive position with the companies we are bidding to.

We will appreciate a timely decision on this matter.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See Section 130.1940. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, they must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not purchase the tangible personal property, then the general contractors cannot be held liable for tax due on another entities' purchases. If subcontractors are utilized and are acting as construction contractors, the transaction between the

June 27, 2000

general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

The paperwork attached to your letter does not provide sufficient information for us to determine the precise nature of the transactions between the parties. For this reason, a precise response is difficult. It appears, however, that you have described a situation in which a manufacturer of coolers enters into a contract with grocers to provide and install coolers. The manufacturer provides the coolers, and subcontracts with COMPANY to install the coolers. Your company appears to act as a subcontractor by attaching piping and other items to the coolers as part of installation. Therefore, under these circumstances, your company incurs Use Tax on the cost price of the materials used to affix the coolers to real estate.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact Jerilynn Gorden at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.